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IN THE

Supreme Court of the United States

October Term, 1958
No. 887

WEBSTER ROSEWOOD CORPORATION,
Petitioner

vs.

SCHINE CHAIN THEATRES, INC., ET AL.

REPLY BRIEF FOR PETITIONER IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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ARGUMENT

(1)

The respondent states (page 4) that "[t]he ultimate disposition of the case is not predicated on a ruling that the effect of the decree is limited as to the time element.", but the opinion of the Court of Appeals is clearly to the contrary (263 F. 2d at 535; Petition, p. 29). It is true that the Court of Appeals went on to say that petitioner failed to prove continuance of respondent's conspiracy after May 19, 1942, but that conclusion was based on a view of the evidence which completely eliminated consideration of "the decree" (id). As stated by the court, the decree "[h]ad no evidential effect" after May 19, 1942 (id).

(2)

Similarly, at page 7 respondent states: "[t]he Court found as a fact that the plaintiff made no demand or request for the first neighborhood run of pictures, *but did not regard this circumstance as determinative* (p. 24)." (Emphasis added.)

Clearly, however, the Court of Appeals held that "[s]uch a demand was a necessary condition of any claim for relief" (263 F. 2d at 536; Petition, p. 31). The court cited a case which had been decided by the Court of Appeals for the Seventh Circuit (*Milwaukee Towne Corp. v. Loew's, Inc.*; 190 F. 2d at 561) but in a later case in the same circuit (*Congress Building Corp. v. Loew's, Incor-*

porated, 246 F. 2d at 587, 595) that court distinguished the earlier case in such a way as to bring it squarely in line with petitioner's contentions. More fully, in the *Congress Building Corp.* case (supra), the court said (246 F. 2d at 595):

> "We must confess that there is some language in the decision by this court in Milwaukee Towne Corp. v. Loew's, Inc., . . . which lends support to the argument advanced by defendants. . . However, as we read the Milwaukee Towne decision, the court did not hold that a demand was a condition precedent to the maintenance of a private antitrust suit. The case was tried on the theory of a refusal to deal . . . and the court held, properly we think, that without a demand or request to deal there could be no refusal to deal. But that is not the case here."

In the *Congress Building Corp.* case (supra), the plaintiff was the lessor of a theatre who claimed that the lessee and the film distributors had conspired to deprive the theatre of a fair allotment of pictures*; and the Court of Appeals held that since the plaintiff had never had any occasion to request the defendants to deal with it there was no necessity for the plaintiff to prove that it made any demands on anybody before commencing suit.

Similarly, in the instant case the petitioning plaintiff-exhibitor never had any occasion to demand that the respondent-exhibitor deal with it, and therefore petitioner was under no obligation to make any demands prior to commencing suit against respondent.

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*By the terms of the lease the lessor had an interest in the earnings of the theatre.

It follows therefore that the decision of the court below is really in conflict with the decisions of the circuit on which it relies.

Petitioner therefore represents that if for no other reason a writ of certiorari should issue in order to resolve the conflict in the decisions of the seventh and second circuits.

More fundamentally, however, petitioner relies on the contention that the writ should issue in order that this Court may pass upon a question of truly basic importance in the administration of the antitrust laws. The record shows that the petitioner is one of the prime victims of one of the most ruthless monopolists ever to feel the sting of this Court's rebuke; and for the sake of many other such possible victims this Court should dispel the doubt which has been engendered by the opinion of the court below with respect to the efficacy of section 5 of the Clayton Act.

Respectfully submitted,

FRANCIS THOMAS ANDERSON,
Counsel for Petitioner.

Dated: Philadelphia, Pa.
June 2, 1959